

Liberia: Investment Climate Statement 2013

Openness to, and Restrictions Upon, Foreign Investment

The World Bank's (WB) Doing Business 2013 Survey indicates that Liberia improved by five places from last year and is ranked 149 of 185 countries. Liberia's reduction of its corporate tax rate from 35% to 25% was a key reason for its improved ranking this year. The WB's report indicated that Liberia also made progress in reforms related to contract enforcement, construction permit issuance, and cross-border trade. The Liberia Better Business Forum, a public-private initiative of the International Finance Corporation (IFC), is collaborating with the Government of Liberia (GOL) to improve the investment climate by increasing access to finance and electricity, enhancing the tax payment system, and developing a small and medium enterprise tax policy.

The table below indicates Liberia's rankings according to various transparency and governance metrics affecting the investment climate (Note: MCC stands for Millennium Challenge Corporation. End Note.):

<u>Measure</u>	<u>Year</u>	<u>Index/Ranking</u>
Heritage Economic Freedom	2013	49.3/100
World Bank Doing Business	FY13	149/185
MCC Government Effectiveness	FY13	Unsatisfactory (25/100)
MCC Rule of Law	FY13	Unsatisfactory (47/100)
MCC Inflation	FY13	Satisfactory (51/100)
MCC Fiscal Policy	FY13	Unsatisfactory (9/100)
MCC Trade Policy	FY13	Unsatisfactory (29/100)
MCC Regulatory Quality	FY13	Unsatisfactory (29/100)
MCC Business Start Up	FY13	Satisfactory (51/100)
MCC Land Rights Access	FY13	Unsatisfactory (18/100)
MCC Natural Resource Protection	FY13	Satisfactory (64/100)
MCC Access to Credit	FY13	Satisfactory (55/100)

The *Investment Act of 2010* and the *Revenue Code of 2000*, amended by the *Consolidated Tax Amendment Act of 2010*, govern investment. According to these laws, foreign investors have the same rights and are subject to the same duties and obligations as those that apply to domestic investors with several notable exceptions. The GOL seeks to empower Liberian entrepreneurs by constraining foreign investment in some sectors. Despite concerns by international donors and some business groups that the law is discriminatory and

anticompetitive, the *Investment Act of 2010* mandates Liberian ownership by imposing the following restrictions:

(A) Ownership of the following business activities or enterprises shall be reserved exclusively for Liberians: supply of sand; block making; peddling; travel agencies; making and sale of ice; tire repair shops; auto repair shops with investments of less than US\$550,000; shoe repair shops; gas stations; video clubs; operation of taxis; importation or sale of second-hand or used clothing; importation or sale of used cars (except authorized dealership which may deal in certified used vehicles of their make); distribution of locally manufactured products; and the retail sale of rice, cement, timber, and planks.

(B) Foreign investors may invest in the following business activities provided they invest no less than US\$500,000. If a Liberian partner maintains at least a 25 percent equity stake, the foreign investors need only invest US\$300,000: production and supply of stone and granite; ice manufacturing; commercial printing; cinemas; production of poultry and poultry products; bakeries; sale of pharmaceuticals; operation of heavy duty trucks; sale of animal and poultry feed; entertainment centers not connected with a hotel establishment; operation of water purification or bottling plant (specifically the production and sale of water in sachets); and advertising agencies, graphics, and commercial artists.

The *Investment Act of 2010* has not effectively increased Liberian participation in commercial industries. The act officially eliminated the mandate that foreign-owned companies must employ qualified Liberians at all levels. In practice, most investment agreements dictate foreign-owned companies employ a certain percentage of Liberians at all human resource levels, including upper management.

To obtain a new concession agreement, potential investors have to engage in lengthy bidding processes. Though the *Public Procurement and Concessions Act of 2005*, the *National Competitive Bidding Regulations*, and the *Investment Act of 2010* introduced a clear, standardized, and transparent system for awarding concessions and public tenders, requests for Expression of Interest and Invitations to Bid are often poorly advertised, hampering the process from the onset. The Inter-Ministerial Concession Committee (IMCC) which includes the Ministers of Justice and Finance and the National Investment Commission Chairman, is statutorily responsible to bid, evaluate, award, and finalize concession agreements. The President sends IMCC-approved contracts to the Legislature for ratification, after which the laws are signed by the President and should be printed into handbills by the Ministry of Foreign Affairs. Depending on contract clauses, re-ratification may be necessary if ownership transfers.

There are a number of World Bank-supported projects managed by special project management units (PMU) embedded in select ministries. These PMUs usually prepare requests for Expression of Interest and International Competitive Bidding in accordance with the procedures and policies stipulated in the WB's Guidelines. For details on current projects, please visit <http://www.worldbank.org/projects>.

Conversion and Transfer Policies

Both Liberian dollars (LD) and U.S. dollars (USD) are legal tender in Liberia. Large-scale business and government transactions are conducted in USD, while retail transactions are conducted either in USD or LD. Contracts and tax agreements are typically specified in USD. The *Investment Act of 2010* allows unrestricted transfer of capital, profits, and dividends, "through any authorized dealer bank in freely convertible currency." The Central Bank of Liberia (CBL) regularly intervenes in the foreign exchange market through weekly auctions to stabilize the exchange rate, facilitate imports, and maintain a low inflation rate. Though conversion restrictions do not exist, the CBL currency auctions are often oversubscribed and it may take investors more than a week to exchange large sums of money. The CBL's regulation concerning the transfer of foreign currency stipulates that every business house, entity or individual wishing to make a foreign transfer of funds may do so without limitation of the amount to be transferred; however, the amount to be transferred must have been in the entity's bank account for not less than three banking days prior to the transfer.

Expropriation and Compensation

The *Investment Act of 2010* guarantees foreign enterprises against expropriation and nationalization, "unless the expropriation is in the national interest for a public purpose, is the least burdensome available means to satisfy that overriding public purpose, and is made on a non-discriminatory basis in accordance with due process of law."

The GOL favors signing non-exclusive concession agreements with major investors. This practice allows the GOL to sign overlapping concession agreements for different resources. For example, the GOL may sign an agricultural concession agreement, but allow itself the flexibility to also sign a mineral and/or timber concession in the same area. As multinational investors develop concession areas, some businesses buy risk insurance to mitigate against the possibility of operational disruption caused by GOL land expropriation.

Many private commercial plantations were disrupted and came under rebel control during the civil war, and then were under government-appointed management. While most private entities were not compensated for war-time losses, most plantations have since reverted to private control under renegotiated or to-be-renegotiated concession agreements. Press reports indicate a number of rubber concessions are being renegotiated. Since February 2012, the Embassy has followed the Liberia National Investment Commission's controversial concession renegotiation procedure, which in at least one case raises concerns about a possible uncompensated expropriation of an American-owned rubber plantation.

The Embassy also is working on a long-pending real estate expropriation case at the Freeport of Monrovia. The National Port Authority (NPA) assumed control of several privately-owned warehouses after the war. The American property owner took the NPA to court to regain possession of the warehouses. Despite both Circuit and Supreme Court rulings in his favor, the American property owner has yet to regain control of the properties. In 2012, the Ministry of Justice proposed a compensation package on behalf of the NPA, which was deemed inadequate and declined by the property owner.

The Embassy is aware of two mining claim disputes which arose because the Ministry of Lands, Mines, and Energy (MLME) allocated mining licenses on overlapping properties. One license holder reported to the Embassy that despite holding a license dating back to the 1970s, the MLME effectively forced the license holder to sell its claim for an unsatisfactorily low price to the other license holder through MLME-arbitrated negotiations.

Dispute Settlement

Liberia's judicial power is vested in a Supreme Court and subordinate courts similar in structure to those of the U.S. The official legal system, based on Anglo-American Common law, is shadowed by, and frequently conflicts with, local customary law based on unwritten, indigenous practices. These competing and un-reconciled legal systems lead to frequent conflicts between Monrovia-based entities and those in rural communities. The judicial system suffers from inadequately trained and poorly compensated judges and other judicial officers, often leading to faulty proceedings and corruption. Many observers believe that judgments can be purchased, and foreign firms tend to be at a disadvantage. Obtaining hearing dates may take a long time because of inadequate resources and case backlogs.

The dysfunctional court system has led the GOL to explore the use of alternative dispute mechanisms to resolve land disputes. Historically, land disputes arose

because the statutory and traditional methods of allocating land were never reconciled. During and after the civil war, unscrupulous individuals falsified land deeds and sold properties to multiple buyers, compounding an already contentious situation. In 2010, the Land Commission (LC) was mandated to establish a land use policy and clarify land ownership issues. The LC has commenced pilot training for alternative land dispute resolution in five of Liberia's 15 counties. In 2012, the Ministry of Justice and the Judiciary indicated a willingness to consider legally enforcing agreements reached via alternative dispute resolution mechanisms.

Concerning dispute settlement procedures, parties to an investment dispute may specify any arbitration or other dispute resolution procedure upon which they agree. The *Investment Act of 2010* states that "where a dispute arises between an investor and Government in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement." Private entities entering into investment contracts with the GOL frequently include arbitration clauses specifying dispute settlement outside of Liberia.

As part of Liberia's judicial reform agenda, the Legislature enacted a new commercial code and established a Commercial Court in 2011. In theory, the court should preside over all financial and commercial disputes. In practice, because of a dearth of regulating legislation, some cases remain unresolved. For example, the Law Reform Commission (LRC) and relevant stakeholders are drafting a bankruptcy law to protect creditors' rights so that bankruptcy cases can be adjudicated.

In July 2012, the Ministry of Lands, Mines and Energy (MLME) canceled 25 mining licenses for non-compliance on issues ranging from companies' failure to pay fees to unsanctioned mining activities. Companies with revoked licenses have the right to request a formal MLME hearing to lodge their grievances. These companies also have the right to appeal to the civil law court and the Supreme Court. One license holder reported to the Embassy that he was forced by the MLME into biased negotiations with competing license holder.

Performance Requirements and Incentives

The *Revenue Code of 2000* amended by the *Consolidated Tax Amendment Act of 2010* dictates that for an investment to qualify for special incentives, the investment activity must be in one of the following priority areas: tourism carried out through tourist resorts, hotels and cultural sites; manufacturing of finished products having at least 30 percent local raw material content excluding water; energy; hospitals and medical clinics; low- and medium-income housing; air, sea, rail, and road transport infrastructure, including ports; high impact information

and communications technology; banking in the non-bank areas in the southeastern region of the country; poultry and horticulture; exportation of sea products; agricultural food crop cultivation and processing, including cocoa and coffee; small- and medium-scale rubber and oil palm cultivation and processing; manufacturing or assembly of finished products for export, provided that at least 70 percent of production is exported from Liberia within any 12-month period; and waste management.

The revised revenue code also authorizes the Ministry of Finance to include other investment activities, not listed above, to promote economic growth. (Note: The revised revenue code differs on investment amounts from the *Investment Act of 2010*. End note.) Under the revised revenue code, capital invested must be at least USD\$1 million for foreign owned businesses, and at least USD\$300,000 for businesses with 100 percent Liberian ownership. Foreign or domestic investment intended to establish a hospital or health clinic has a lower threshold of at least USD\$50,000. Regarding tax incentives, section 16d of the revised revenue code states, “for investments exceeding USD\$10 million, and subject to approval by the President and the Legislature, the tax incentives permitted by this section may be allowed for a period of up to fifteen years; no tax incentive under this subsection shall be valid or enforceable without legislative approval.” Capital assets and other goods to be used in the project are exempted from import duty up to 100 percent of their dutiable value. The revised code reduces both the maximum annual tax on net corporate profits derived from Liberian operations and personal income tax from 35% to 25%. The maximum corporate income tax rate in Liberia is 25%, except in the case of mining companies, which may pay up to 30%. For additional information on incentives and taxation, please visit the National Investment Commission at <http://www.nic.gov.lr/> and the Ministry of Finance websites at <http://www.mof.gov.lr>.

Right to Private Ownership and Establishment

Land ownership is restricted to Liberian citizens. Chapter III, Article 22, of the Liberian Constitution states: “Every person shall have the right to own property alone as well as in association with others, provided that only Liberian citizens shall have the right to own real property within the Republic. Private property rights, however, shall not extend to any mineral resources on or beneath any land or to any lands under the seas and waterways of the Republic. All mineral resources in and under the seas and other waterways shall belong to the Republic. Non-citizen missionary, educational and other benevolent institutions shall have the right to own property, as long as that property is used for the purposes for which acquired; property no longer so used shall escheat to the Republic.”

Rights to land ownership and use of resources such as minerals and timber have become increasingly critical issues in recent years, with increased foreign investor interest and as traditional and statutory uses of land collide. Though the GOL established a moratorium on public land sales in 2010 to resolve the conflicting land tenure systems, it continues to enter into legally binding investment agreements with firms to use land, including for mineral and agricultural concessions. As firms commence operations, local populations believe their land is being encroached upon, which leads to disputes, strikes, and sometimes violence. In the interest of minimizing lost productivity and in the absence of adjudication from the GOL, companies often make additional community-level payments to resolve competing land claims. The future enforceability of such agreements is unclear. Prospective investors should not underestimate the potential for costly and complex land dispute issues to arise.

Protection of Property Rights

To ameliorate land tenure issues exacerbated by the war, in 2010 the GOL established the Land Commission (LC). The LC is drafting a Land Rights Policy to reconcile the statutory and customary land tenure systems. (Note: Customary land is owned and administered by indigenous communities according to customary practices and norms. End Note.) The policy will form the basis for a subsequent Land Rights Law, which is expected to address land administration; land use and management; and alternative dispute resolution for land cases. As part of the ongoing reform process, in July, 2012, the LC drafted a bill entitled, *An Act against Criminal Conveyance of Land*, which was submitted to the legislature by the President and passed by the Senate in August, 2012. The bill is pending concurrence by the House of Representatives. If passed, the law will codify the accountability of land surveyors and provide sanctions for those found colluding with sellers and engaging in illegal land transactions. In August 2012, the LC also launched a massive civic education, public consultation and outreach campaign on its ongoing Land Rights Policy drafting process.

Concurrently, efforts are underway at the *Liberian Center for National Documents and Records Agency* (CNDRA) to populate a land cadastre for proper recording and mapping of land title deeds. This effort is designed to clarify property demarcation and reduce concession-community overlap. Additionally, the Ministry of Lands, Mines and Energy has a mining cadastre of mining rights and is establishing a land cadastre to clarify property rights. It is not clear how the LC, CNDRA, and MLME are coordinating these cataloguing efforts to ensure a coordinated and transparent record management system. Database maintenance has been problematic in the past, which led to faulty, publicly available cadastre records.

Liberia is a member of the World Intellectual Property Organization and the African Regional Intellectual Property Organization, and a contracting party to international conventions and treaties on the protection of intellectual and industrial property rights, including the Berne, Paris, Lisbon, Vienna, Washington conventions and the Madrid Agreement. The Constitution of Liberia does guarantee the protection of private property and the Act adopting the New Copyright Law of Liberia, approved in July 1997, provides the legal and administrative framework for protection of intellectual and industrial property rights. The Copyright Office (CRO) and the Industrial Property Office (IPO) operates under the Ministry of Commerce and Industry, but lack capacity to manage intellectual property issues. The Ministry has prepared a draft amendment to the New Copyright Law of 1997 to be submitted to legislature, with clauses to merge the CRO and IPO.

All imports of intellectual property must be so identified on the import permit, rather than being identified as "general merchandise." All businesses dealing in intellectual property must reflect that on their business registration form. The Liberia Copyright Office recorded over 217 businesses in 2012, particularly by songwriters, movie producers and authors holding intellectual property rights. Holders of intellectual property rights have theoretical access to judicial redress, but laws pertaining to patents, trademarks, and industrial designs are not enforced. There is a general lack of knowledge about what constitutes intellectual property infringement in Liberia, and most Liberians do not understand that a person has to pay for the use of intellectual property. Broadcasters do not tend to pay royalties for use of protected material. Infringement of intellectual and industrial property rights such as duplication of movies, music and books is prevalent. Counterfeit drugs, apparel, cosmetics, mobile phones, computer software and hardware are sold openly.

Transparency of the Regulatory System

The impact of years of violence and bad governance undermined the rule of law and created unchecked opportunities for corruption. Regulatory harmonization continues across ministries and agencies with conflicting rules and regulations including but not limited to: forestry legislation reform commenced in 2006 and is ongoing; petroleum legislation reform commenced in 2012 and is ongoing; mining legislation is expected to be revised, commencing in 2013; and fisheries legislation reform began in 2010 and is ongoing. Lack of legislation has not hindered significant investment in many sectors. When regulatory issues arise, GOL officials can be arbitrary or heavy-handed when resolving conflicts. For example, over the course of 2011, the GOL failed to properly regulate the majority of commercial forestry licenses it issued. After reports of irregularities

and corruption, investigations found that the licenses conflicted with forestry reform laws, leading to President Sirleaf's imposition of a moratorium on timber exports. A GOL representative reported that all of the licenses will likely be reviewed and cancelled regardless of corporate fault.

Liberia is a member of the worldwide Extractive Industries Transparency Initiative (EITI) and was the first African nation to be validated as EITI compliant. The Liberian Extractive Industries Transparency Initiative's (LEITI) has successfully launched all annual reports in compliance with EITI guidance since 2007. LEITI reporting aims to publicize GOL revenue payments made by private companies in hopes of reducing opportunities for graft and corruption. In 2012, LEITI increased the scope of its reporting to include not just GOL ministries but also state-owned enterprises and agencies. If successful, LEITI could shine its anti-corruption light on sizeable revenue streams at fiscally opaque state agencies. LEITI has also started nominally sanctioning non-compliant reporting companies, though it remains to be seen if such companies will submit to financial penalties.

Efficient Capital Markets and Portfolio Investment

In 2012, 77 bank branches provided basic banking services throughout Liberia, but no capital market or portfolio investment options existed. The Central Bank of Liberia (CBL), with International Monetary Fund (IMF) assistance, completed all preparations to re-start treasury bill operations and anticipates commencing auctions in January 2013. To better promote banking sector efficiency, safety, and stability, the IMF also has provided technical assistance to the CBL in support of its gradual transition from a compliance-based to a risk-based supervision model. The CBL has established its Consumer Protection Unit to ensure customer protection and boost confidence in the banking system.

During 2012, the CBL recorded stable growth in the banking sector in terms of total assets, loans and deposits, which it attributed to Liberia's growing economy. With the exception of three banks, the banking system continues to be well capitalized and liquid. Poor asset quality and high loan loss provisions have made bank profitability a challenge. According to the CBL, five of nine banks are in violation of its Guidelines Concerning Supervisory Intervention, because they reported non-performing to total loan ratios above the statutory limit of 10%. While financial institutions allocate credit on market terms to foreign and domestic investors, the historically high rate of non-performing loans has led banks to offer short-term (less than 18 months), high-interest loans (12-20%) that constrain capital investment and limit new business development. There is no effective credit rating system, and many firms lack business records necessary for credit approval. Banks rely on the CBL's Credit Reference System, a manually-updated spreadsheet containing derogatory information about certain

creditors. The obstacles to domestic travel, including poor roads and inclement weather, and communication increase the risk in accepting collateral outside Monrovia and the lack of reliable land title hampers access to credit.

The Liberian market offers the private sector few credit instruments. Most private companies also do not issue debt, in part because there is no government benchmark, and in part because there is not a culture of using such investment instruments. Informal credit clubs called *sousous* exist in which members contribute funds to the group, which in turn makes short-term (one to three month), high-interest loans to members. The United States Overseas Private Investment Corporation (OPIC) funded a non-banking financial institution, the Liberian Enterprise Development Finance Company (LEDFC). Since 2007, LEDFC invested USD\$5 million of a USD\$20 million fund in small- and medium-sized Liberian companies. During 2012, LEDFC's implementing partner became insolvent, found an interested buyer, and experienced lengthy delays in the CBL's consideration of LEDFC's request to transfer ownership, causing an inability to issue new loans.

Competition from State Owned Enterprises (SOEs)

Liberia has more than 20 state owned enterprises (SOEs) and regulatory agencies, some of which exist statutorily but are non-functioning. The most notable operating SOEs affecting private enterprise include: the National Port Authority (NPA), the Liberia Electricity Corporation, Roberts International Airport, the Liberia Civil Aviation Authority, the National Oil Company of Liberia, the Forestry Development Authority, and the Liberia Maritime Authority. The history of SOEs is characterized by high levels of corruption, financial opaqueness, cronyism, and mismanagement. Liberia's *Public Financial Management Law of 2009* set out rules governing SOE management and operations. The severely under-resourced Bureau of State Enterprise, which is responsible for SOE oversight, does little to deter dubious SOE practices. Questionable procurement, licensing, and design-operate-transfer procedures are common complaints against some SOEs.

Corporate Social Responsibility (CSR)

The GOL expects foreign investors to offer social services to local communities in which they operate. Concession contracts dictate service provision, including, but not limited to: road and infrastructure development, school construction and health service provision. Even after a concession is ratified by the legislature, most investors find that communities expect the firms to negotiate separately with local leaders for additional services. This process can be cumbersome, lead to delays, and greatly increase costs.

A consortium of foreign investors and GOL officials launched the Corporate Responsibility Forum in 2009. This organization encourages responsible investment, good corporate citizenship and collective action for development based on generally accepted CSR principles such as the OECD Guidelines for Multinational Enterprises. More information can be found at <http://www.crforumliberia.org>.

Political Violence

2011's presidential and parliamentary elections were the first organized by the Liberian Government, following the UN-assisted elections in 2005. This marked an important step in Liberia's efforts to advance democracy and to promote peace and security. The Armed Forces of Liberia (AFL) were completely demobilized and with USG assistance a modern, professional force has been trained, though is still reliant on international support and not fully capable. The Liberian National Police (LNP) has also been restructured and includes an Emergency Response Unit, which has the ability to respond rapidly to address sudden tactical police emergencies. The presidential Special Security Service (SSS) was restructured into a new Executive Protection Service (EPS), and continues to provide a high level of protection for the President. Though UN troops are gradually being withdrawn as Liberia's security forces gain in strength and experience, Liberia's peace remains fragile and potential for political violence remains high. Increasing freedom and transparency for the Liberian people has led to vigorous pursuit of perceived rights, which results in active, often acrimonious, political debate. Though professional journalistic capacity is low, there are free and open media that have increased political awareness among Liberians. As noted previously, access to land remains a volatile issue, and there is a significant potential for public protests and demonstrations to become highly politicized.

Corruption

The government of Liberia is fighting corruption, but it remains endemic in the Liberian social fabric. The 2012 Transparency International Corruption Perception Index showed that Liberia improved by 16 places over 2011, ranking 75 of 176 countries. The 2012 Mo Ibrahim Governance Index revealed that Liberia ranked 34 of 52 African countries. The report indicates Liberia scored highest in the governance category of participation and human rights and lowest in that of sustainable economic opportunity.

Travelers to Liberia are likely to encounter officials who solicit bribes (often euphemistically referred to as "cold water", "my Saturday", or "my Christmas").

Multinational firms often report having to pay fees to GOL agencies that were not stipulated in investment agreements.

When new concessions are signed and ratified, the press frequently reports on corruption allegations implicating both the Legislature and the Executive Mansion.

Despite a number of USG and other donor-funded assistance projects, lack of training, inadequate salaries, and a culture of corruption with impunity have created a weak judicial and regulatory system that actively hampers investment.

The U.S. Government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their own companies' acts of corruption, including bribery of foreign public officials, by requiring them to uphold their obligations under relevant international conventions. A U.S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. agencies, as noted below.

U.S. Foreign Corrupt Practices Act: In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to foreign public officials for the purpose of obtaining or retaining business for or with, or directing business to, any person. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States. For more detailed information on the FCPA, see the FCPA Lay-Person's Guide at: <http://www.justice.gov/criminal/fraud/>

Other Instruments: It is U.S. Government policy to promote good governance, including host country implementation and enforcement of anti-corruption laws and policies pursuant to their obligations under international agreements. Since enactment of the FCPA, the United States has been instrumental to the expansion of the international framework to fight corruption. Several significant components of this framework are detailed below.

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: The OECD Anti-bribery Convention entered into force in February 1999. As of March 2009, there are 38 parties to the Convention including the United States (see <http://www.oecd.org/dataoecd/59/13/40272933.pdf>). Major exporters China, India, and Russia are not parties, although the U.S. Government strongly endorses their eventual accession to the Convention. The Convention obligates the Parties to criminalize bribery of foreign public officials in the conduct of

international business. The United States meets its international obligations under the OECD Anti-bribery Convention through the U.S. FCPA.

United Nations Convention against Corruption: The UN Anticorruption Convention entered into force on December 14, 2005, and there are 158 parties to it as of November 2011 (see <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>). The UN Convention is the first global comprehensive international anticorruption agreement. The UN Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption. The UN Convention goes beyond previous anticorruption instruments, covering a broad range of issues ranging from basic forms of corruption such as bribery and solicitation, embezzlement, trading in influence to the concealment and laundering of the proceeds of corruption. The Convention contains transnational business bribery provisions that are functionally similar to those in the OECD Antibribery Convention and contains provisions on private sector auditing and books and records requirements. Other provisions address matters such as prevention, international cooperation, and asset recovery.

Inter-American Convention against Corruption: In 1996, the Member States of the Organization of American States (OAS) adopted the first international anticorruption legal instrument, the Inter-American Convention against Corruption (OAS Convention), which entered into force in March 1997. The OAS Convention, among other things, establishes a set of preventive measures against corruption, provides for the criminalization of certain acts of corruption, including transnational bribery and illicit enrichment, and contains a series of provisions to strengthen the cooperation between its States Parties in areas such as mutual legal assistance and technical cooperation. As of December 2009, the OAS Convention has 34 parties (see <http://www.oas.org/juridico/english/Sigs/b-58.html>).

Council of Europe Criminal Law and Civil Law Conventions: Many European countries are parties to either the Council of Europe (CoE) Criminal Law Convention on Corruption, the Civil Law Convention, or both. The Criminal Law Convention requires criminalization of a wide range of national and transnational conduct, including bribery, money-laundering, and account offenses. It also incorporates provisions on liability of legal persons and witness protection. The Civil Law Convention includes provisions on compensation for damage relating to corrupt acts, whistleblower protection, and validity of contracts, inter alia. The Group of States against Corruption (GRECO) was established in 1999 by the CoE to monitor compliance with these and related anti-corruption standards. Currently, GRECO comprises 49 member States (48 European countries and the

United States). As of December 2011, the Criminal Law Convention has 43 parties and the Civil Law Convention has 34 (see www.coe.int/greco.)

Free Trade Agreements: While it is U.S. Government policy to include anticorruption provisions in free trade agreements (FTAs) that it negotiates with its trading partners, the anticorruption provisions have evolved over time. The most recent FTAs negotiated now require trading partners to criminalize “active bribery” of public officials (offering bribes to any public official must be made a criminal offense, both domestically and trans-nationally) as well as domestic “passive bribery” (solicitation of a bribe by a domestic official). All U.S. FTAs may be found at the U.S. Trade Representative Website: <http://www.ustr.gov/trade-agreements/free-trade-agreements>.

Local Laws: U.S. firms should familiarize themselves with local anticorruption laws, and, where appropriate, seek legal counsel. While the U.S. Department of Commerce cannot provide legal advice on local laws, the Department’s U.S. and Foreign Commercial Service can provide assistance with navigating the host country’s legal system and obtaining a list of local legal counsel.

Assistance for U.S. Businesses: The U.S. Department of Commerce offers several services to aid U.S. businesses seeking to address business-related corruption issues. For example, the U.S. and Foreign Commercial Service can provide services that may assist U.S. companies in conducting their due diligence as part of the company’s overarching compliance program when choosing business partners or agents overseas. The U.S. Foreign and Commercial Service can be reached directly through its offices in every major U.S. and foreign city, or through its Website at www.trade.gov/cs.

The Departments of Commerce and State provide worldwide support for qualified U.S. companies bidding on foreign government contracts through the Commerce Department’s Advocacy Center and State’s Office of Commercial and Business Affairs. Problems, including alleged corruption by foreign governments or competitors, encountered by U.S. companies in seeking such foreign business opportunities can be brought to the attention of appropriate U.S. government officials, including local embassy personnel and through the Department of Commerce Trade Compliance Center “Report A Trade Barrier” Website at tcc.export.gov/Report_a_Barrier/index.asp.

Guidance on the U.S. FCPA: The Department of Justice’s (DOJ) FCPA Opinion Procedure enables U.S. firms and individuals to request a statement of the Justice Department’s present enforcement intentions under the anti-bribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure are available on DOJ’s Fraud Section Website at

www.justice.gov/criminal/fraud/fcpa. Although the Department of Commerce has no enforcement role with respect to the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. For further information, see the Office of the Chief Counsel for International Counsel, U.S. Department of Commerce, Website, at http://www.ogc.doc.gov/trans_anti_bribery.html. More general information on the FCPA is available at the Websites listed below.

Exporters and investors should be aware that generally all countries prohibit the bribery of their public officials, and prohibit their officials from soliciting bribes under domestic laws. Most countries are required to criminalize such bribery and other acts of corruption by virtue of being parties to various international conventions discussed above.

Anti-Corruption Resources

Some useful resources for individuals and companies regarding combating corruption in global markets include the following:

- Information about the U.S. Foreign Corrupt Practices Act (FCPA), including a “Lay-Person’s Guide to the FCPA” is available at the U.S. Department of Justice’s Website at: <http://www.justice.gov/criminal/fraud/fcpa>.
- Information about the OECD Anti-bribery Convention including links to national implementing legislation and country monitoring reports is available at: http://www.oecd.org/departement/0,3355,en_2649_34859_1_1_1_1_1,00.html. See also new Anti-bribery Recommendation and Good Practice Guidance Annex for companies: <http://www.oecd.org/dataoecd/11/40/44176910.pdf>.
- General information about anticorruption initiatives, such as the OECD Convention and the FCPA, including translations of the statute into several languages, is available at the Department of Commerce Office of the Chief Counsel for International Commerce Website: http://www.ogc.doc.gov/trans_anti_bribery.html.
- Transparency International (TI) publishes an annual Corruption Perceptions Index (CPI). The CPI measures the perceived level of public-sector corruption in 180 countries and territories around the world. The CPI is available at: http://www.transparency.org/policy_research/surveys_indices/cpi/2009. TI also publishes an annual *Global Corruption Report* which provides a systematic evaluation of the state of corruption around the world. It includes

an in-depth analysis of a focal theme, a series of country reports that document major corruption related events and developments from all continents and an overview of the latest research findings on anti-corruption diagnostics and tools. See <http://www.transparency.org/publications/gcr>.

- The World Bank Institute publishes Worldwide Governance Indicators (WGI). These indicators assess six dimensions of governance in 213 countries, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. See <http://info.worldbank.org/governance/wgi/index.asp>. The World Bank Business Environment and Enterprise Performance Surveys may also be of interest and are available at: <http://data.worldbank.org/data-catalog/BEEPS>.
- The World Economic Forum publishes the *Global Enabling Trade Report*, which presents the rankings of the Enabling Trade Index, and includes an assessment of the transparency of border administration (focused on bribe payments and corruption) and a separate segment on corruption and the regulatory environment. See <http://www.weforum.org/s?s=global+enabling+trade+report>.
- Additional country information related to corruption can be found in the U.S. State Department's annual *Human Rights Report* available at <http://www.state.gov/g/drl/rls/hrrpt/>.
- Global Integrity, a nonprofit organization, publishes its annual *Global Integrity Report*, which provides indicators for 106 countries with respect to governance and anti-corruption. The report highlights the strengths and weaknesses of national level anti-corruption systems. The report is available at: <http://report.globalintegrity.org/>.

Bilateral Investment Agreements

Liberia has a few bilateral trade agreements, but some of the agreements have remained inactive for years. In December 2012, the GOL announced that Liberia was selected by the Millennium Challenge Corporation (MCC) Compact program as eligible to develop a compact proposal. The Ministry of Commerce is working with both international and domestic partners to harmonize tariffs, engage regional and global bodies, and strengthen the regulatory environment. The Ministry has drafted the nation's first-ever trade policy, which the GOL and its partners are validating, including streamlining Liberia's tariffs and customs

procedures, as part of the GOL's efforts to qualify for WTO accession and the West Africa Customs Union.

In August 2011, Liberian officials met with their American counterparts to discuss their Trade and Investment Framework Agreement (TIFA) to reduce trade and investment barriers. This was the third meeting of the United States-Liberia TIFA Council, which provides a high-level forum for advancing cooperation on bilateral trade and investment issues. Liberia enjoys preferential access to the United States' market under special access and duty reduction programs, including the Generalized System of Preference (GSP) and the African Growth and Opportunity Act (AGOA). The country is a signatory to the Convention on the Settlement of Investment Disputes between State and Nationals of other States. In May 2011, Liberia and the EU signed a comprehensive trade agreement, known as Voluntary Partnership Agreement (VPA), aimed at controlling illegal logging and improving forest sector governance. Liberia also belongs to the Economic Community of West Africa States (ECOWAS), the African Union (AU), New Partnership for Africa's Development (NEPAD) and the Multilateral Investment Guarantee Agency (MIGA). Although Liberia has theoretical access to sizable regional markets including the 250 million consumers of ECOWAS and the nearly 40 million consumers of the Mano River Union (MRU), the total volume of regional trade is low because of poor infrastructure. Under the MRU, trade with member states is duty free and any goods seeking benefit must be accompanied by proof-of-origin documentation. In October 2012, the GOL signed a treaty connecting Liberia to the West African Power Pool (WAPP) to increase the flow of electricity access to the rural communities by 2016.

U.S. Overseas Private Investment Corporation (OPIC)/Other Investment Insurance Programs

OPIC provides coverage for investors in Liberia. The U.S. Government restored Liberia's eligibility for the Generalized Systems of Preferences in 2006. The Liberian dollar is a fully-convertible currency and operates on a free float with no predetermined path. Contracts and agreements are typically denominated in USD. It is therefore unlikely that OPIC would ever be required to pay an inconvertibility claim. There has not been any major risk of currency depreciation in 2012, as the Central Bank of Liberia continues to strengthen its foreign exchange reserves. However, the country will continue to run large current account deficits until raw material exports expand significantly.

Labor

The Liberian labor force is predominantly illiterate and unskilled, and most Liberians lack basic computer skills. According to UNESCO's statistics (2010),

the adult literacy rate for Liberia is estimated at 60.8 percent and the youth (15-24) literacy rate 76.5 percent. Less than 12 percent of the FY 2012-13 national budget is allocated to the education sector. Demand for jobs is tremendous, as the formal economy employment rate is estimated at only 25%. About 80% of the workforce is engaged in the informal sector, contributing to family businesses or small-scale farms.

The Ministry of Labor requires employers to demonstrate goodwill efforts to hire qualified Liberians before it will grant work visas to foreigners, and some foreign investors find this process to be a lengthy one. Many investment contracts require businesses to employ a certain percentage of Liberians, including top management positions. Foreign managers report a lack of qualified local labor as their biggest operational hindrance.

Employees enjoy freedom of association, and they have the right to establish and become members of organizations of their own choosing without previous authorization or coercion. Employers are prohibited from discriminating against an employee because of membership in a labor organization. Employee association members frequently demand and strike for compensation at times of ownership transition or to seek payment of obligations owed by pre-conflict employers. Under Liberian laws, labor organizations and associations have the right and freedom to draw up their constitutions and rules for electing their representatives, organizing activities, and formulating programs. The laws specify that no industrial labor union or organization shall exercise any privilege or function for agricultural workers and no agricultural labor union or organization shall exercise any privilege or function for industrial workers.

In July 2011, the legislature merged the *Decent Work Bill* together with the *Minimum Wage Law* to create a new *Decent Work Bill*. The new labor law is intended to improve worker incentives, expectant parent leave, and private sector minimum wage. In September 2012, the Liberian House of Representatives passed the *Decent Work Bill* and it is pending Senate concurrence.

Foreign Trade Zones/Free Trade Zones

The government of Liberia established the Liberia Industrial Free Zone Authority (LIFZA) in 1975 to encourage and promote foreign cooperation and investments in the country. The LIFZA is one of the statutory but dysfunctional state owned enterprises in Liberia. The Monrovia Industrial Park (MIP) is a 450-hectare parcel of land set aside by the Legislature for industrial purposes in Gardnersville Township outside Monrovia. According to Liberia's investment policy, industries that establish within a free zone area are entitled to waive import duties and corporate taxes. The National Investment Commission manages free trade

zones and is currently working with the IFC's investment climate team to draft a law that will establish active industrial parks and guide the development of the Special Economic Zones in Liberia.

Foreign Direct Investment Statistics

Though Liberia has a limited domestic market of roughly four million people, having to rebuild the post-conflict economy from scratch provides many foreign investment opportunities in the agriculture, services, and manufacturing sectors. The *Amended and Restated Public Procurement & Concessions Act of 2010* gives the Public Procurement and Concessions Commission (PPCC) oversight responsibilities for procurement of goods, works and services as well as the granting of concessions in Liberia.

Currently, Liberia's export sector relies heavily on rubber, which last year accounted for about 59% of total exports. Iron ore will represent an increasingly large proportion of exports as multibillion dollar investments from ArcelorMittal, China Union and Sesa Goa start and expand production. In September 2011, ArcelorMittal made Liberia's first export shipment of iron ore in 25 years. Liberia's main export destinations include Europe, the United States, and China. The country's main imports are food and live animals, machinery and transport equipment, manufactured goods, and petroleum products.

Business registration statistics indicate that the Liberia Business Registry (LBR) registered a total of 8,518 local businesses and 1,190 foreign owned businesses as of December 15, 2012. (Note: The list of foreign-owned businesses includes locally incorporated and registered businesses owned by Non-Liberians, as well as entities established under different legal jurisdictions which sought to operate business in Liberia. End note.) Operating under the Ministry of Commerce and Industry, the LBR is a one-stop-shop business registration center established to allow entrepreneurs to register a business within 48 hours.

Annual FDI in Liberia in Millions of USD (most recent data available)

2006	2007	2008	2009	2010	2011
\$108	\$132	\$200*	\$378*	\$390*	\$390*

Source: World Investment Report, UNCTAD

***Estimate**